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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,282	04/10/2001	Kelly Olsen	10209.123	8316
21999 7590 05/19/2009 KIRTON AND MCCONKIE 60 EAST SOUTH TEMPLE, SUITE 1800 SALT LAKE CITY, UT 84111				
EXAMINER				
LASTRA, DANIEL				
ART UNIT		PAPER NUMBER		
3688				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/832,282

Applicant(s)

OLSEN ET AL.

Examiner

DANIEL LASTRA

Art Unit

3688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/03/2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-25 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18-25 and 27-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. Claims 1-16, 18-25 and 27-29 have been examined. Application 09/832,282 (METHOD FOR UNILEVEL MARKETING) has a filing date 04/10/2001.

Response to Amendment

2. In response to Non Final rejection filed 11/07/2008, the Applicant filed an Amendment on 03/03/2009, which amended claims 1, 16.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-16, 18-25 and 27-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Said claims recite the term "tangible" which is not mentioned or defined in Applicant's specification. According to a dictionary, "tangible" can be "capable of being touched" or "real or a actual" "not vague or elusive" or "having actual physical existence". Therefore, there are different meanings for "tangible".

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-16, 18-20, 22-25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miglautsch (US 6,993,489) in view of Reber (US 2002/0129121).

As per claim 1, Miglautsch teaches:

A method of unilevel marketing and distribution comprising the steps of:

preparing tangible promotional materials at a distributor for mass distribution (see col 5, lines 1-20);

using a computer to receive a reference for a specific potential customer from a sales representative, the reference being initiated by said sales representative who is known personally by said potential customer (see col 7, lines 10-22) and received by the distributor (see col 6, lines 10-20 "host database"), wherein said reference includes a message that is personalized specifically to the potential customer from said sales representative (see col 5, lines 1-30);

personalizing the previously prepared tangible promotional materials for distribution to said potential customer, wherein personalizing the promotional materials comprises the step of modifying the previously prepared tangible promotional materials to include said personalized message and means for identifying said sales representative (see col 5, line 65 – col 6, line 15);

distributing said tangible promotional materials directly to the said potential customers from the distributor (see col 6, lines 1-30);

using a computer to:

receive a money spent from said potential customer, where said money spent is received by said distributor (i.e. host database) and identifies said sales representative (see col 1, lines 45-55; col 5, line 65 – col 6, line 3);

distribute a portion of said received money spent as a commission to said sales representative (see col 1, lines 50-55). Miglautsch does not expressly mention that said “money spent from said potential customer” is received from payment for an order from said potential customer. However, Reber teaches a system where promotional materials are mass distributes to potential customers and where said system identifies sale agents that target said promotional materials to said potential customers in order to compensate said sales agents when said potential customers purchase items from said promotional materials (see paragraphs 27-32). Reber also teaches providing said orders to distributors (see paragraph 32), receiving payment from said orders (see paragraph 27) and compensating sales agents based upon sales figure of said purchase (e.g. once a specific sales amount has been attained) (see paragraph 36). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Miglautsch would mass distribute personalize promotional materials to potential customers and would compensate the sales agents that target said promotional materials to said potential customers based upon purchase

orders related to said promotional materials, as taught by Reber in order to compensate said sales agents for contacting potential customers.

As per claim 16, Miglautsch teaches:

A method for selling product through direct promotion and direct distribution to a customer, the method comprising the steps of:

preparing tangible promotional materials at the distributor for mass distribution (see col 5, lines 1-20);

using a computer to receive referral from a sales representative over the Internet for a specific potential customer, the referral being initiated by said sales representative entering information into a webpage (see col 7, lines 1-25), wherein said referral includes a message that is personalized specifically to said customer from said sales representative, who is personally known by said customer (see col 7, lines 1-25);

personalizing the tangible promotional materials at the distributor for said customer, wherein personalizing said tangible promotional materials comprises the step of modifying the tangible promotional materials to include said personalized message and an identifier of said sales representative (see col 5, lines 10-35);

sending said tangible promotional materials to said customer from a distributor (see col 6, lines 20-30);

using a computer to:

receive a money spent from said customer, said money spent containing said identifier of said sales representative (see col 1, lines 45-55; col 5, line 65 – col 6, line 3);

wherein said money spent is received by an entity selected from a list consisting of the distributor and a seller (i.e. host database) and provide a portion of said money spent to said sales representative as a commission for said purchase (see col 1, lines 45-55).

Miglautsch does not expressly mention that said "money spent from said customer" is received from payment for an order from said customer. However, the same argument made in claim 1 regarding this missing limitation is also made in claim 16.

As per claims 2, Miglautsch teaches:

wherein the reference received from the sales representative is received over the Internet using a web page accessed by the sales representative (see col 7, lines 1-20).

As per claims 3 and 18, Miglautsch teaches:

wherein said means for identifying the sales representative is an identification number (see col 5, lines 65-67).

As per claim 4, Miglautsch teaches:

wherein said means for identifying provides said distributor with preferred options for distributing said portion of said received payment to the sales representative (see col 6, lines 55-62).

As per claims 5 and 19, Miglautsch teaches:

wherein said reference is received over the Internet (see col 6, lines 55-67).

As per claims 6 and 20, Miglautsch teaches:

wherein said reference is received via E-mail (see col 3, lines 25-40).

As per claims 8 and 22, Miglautsch fails to teach:

wherein the promotional materials are in an audio form. However, Official notice is taken that it is old and well known in the computer art to use video and/or audio when transmitting advertisements and promotions to users via the Internet. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Miglautsch would send audio promotions to users via the Internet, as said promotions would provide a better multimedia experience to said users.

As per claim 9, Miglautsch does not teach:

wherein the promotional materials are in printed form. However, Reber teaches that said limitation is old and well known (see paragraph 12). Therefore, It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Miglautsch would send printed promotions to users, as Reber teaches that it is old and well known in the promotion multilevel marketing that send print promotions to potential customers.

As per claims 10 and 24, Miglautsch fails to teach:

wherein the promotional materials are in a video presentation format. However, Official notice is taken that it is old and well known in the computer art to use video when transmitting advertisements and promotions to users via the Internet. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Miglautsch would send video promotions to users via the Internet, as said promotions would provide a better multimedia experience to said users.

As per claims 11 and 25, Miglautsch teaches:

wherein the reference provided by the sales representative includes the customer's age, interests, income level, or household (see col 7, lines 25-40).

As per claim 12, Miglautsch teaches:

wherein the reference is received by a distributor was input by the sales representative at a website (see col 7, lines 1-20).

As per claims 13 and 27, Miglautsch teaches:

wherein the reference received from the sales representative is stored in a customer database (see col 7, lines 1-20).

As per claims 14 and 28, Miglautsch teaches:

wherein the promotional materials are transmitted to the customer over the Internet in the form of electronic mail (see col 3, lines 25-30).

As per claims 15 and 29, Miglautsch does not expressly teach:

wherein the customer purchases over the Internet. However, Reber teaches a system where promotional materials are mass distributes to potential customers and where said system identifies sale agents that target said promotional materials to said potential customers in order to compensate said sales agents when said potential customers purchase items from said promotional materials (see paragraphs 27-32). Reber also teaches providing said orders to distributors (see paragraph 32), receiving payment from said orders (see paragraph 27) and compensating sales agents based upon sales figure of said purchase (e.g. once a specific sales amount has been attained) (see paragraph 36). Therefore, the same rejection applied to claim 1 regarding this missing limitation is also applied to claims 15 and 29.

6. Claims 7 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miglautsch (US 6,993,489) in view of Reber (US 2002/0129121) and further in view of Sash (US 2005/0075925).

As per claims 7 and 21, Miglautsch does not teach:

wherein said promotional material are received via a telephone. However, Sash teaches that it is old and well known in the promotion art to transmit promotional material to customers via a telephone (see paragraph 128). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Miglautsch would target promotions to sponsors (i.e. potential customers) via telephone as Sash teaches that it is old and well known to do so.

Response to Arguments

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James W. Myhre can be reached on (571)272-6722. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/
Examiner, Art Unit 3688
May 16, 2009